

INSTRUCTIONS TO COUNSEL

Criminal Jury Trial

Judge John D. Holschuh

1. Counsel Tables

The parties will occupy the counsel tables chosen or agreed upon before the opening of the first session of the trial.

2. Appearances

Counsel will please enter their appearances with the court reporter before the start of the opening session of the trial.

3. Court Sessions

Morning session begins 9:00 a.m.
Recess approximately 10:30 a.m. for 15 minutes
Noon recess approximately 12:00 noon

Afternoon session begins 1:30 p.m.
Recess approximately 3:15 p.m. for 15 minutes
Adjourn approximately 4:30 p.m.

The parties and all counsel will be present at counsel tables at all sessions before the jury is brought into the courtroom and will remain until after the jury leaves the courtroom at the end of all sessions. The parties and counsel will stand when the jury is conducted into and out of the courtroom.

4. Conduct of Trial by Counsel

If more than one lawyer appears for the government and/or defendant(s), they will advise the courtroom deputy clerk before the opening session of court which counsel will:

- (a) Conduct the voir dire examination
- (b) Make opening statement
- (c) Conduct examination of witnesses
- (d) Make (or divide) closing argument

The division of duties as given to the clerk may be changed during the course of the trial.

5. Address by Counsel

Counsel will address the Court and the jury in the following manner:

- (a) Voir dire examination, opening statements and closing arguments will be conducted from the lectern as faced to the jury by the courtroom deputy clerk.
- (b) All addresses to the Court will be made from the lectern as placed by the courtroom deputy clerk.

6. Qualification of jury

The whole panel of prospective jurors (i.e., the twelve persons seated in the jury box and those seated otherwise) will be examined in one continuing examination.

The Court will conduct a basic voir dire, but Counsel may supplement the Court's examination with respect to specific matters peculiarly applicable to the nature of the case at trial and the issues presented.

Counsel must not repeat in the same or other form of language the questions put to the panel by the Court.

Counsel must address their questions to the whole panel of prospective jurors. Counsel may question an individual juror only if it develops from the question put to the whole panel that the answer of a prospective juror justifies further personal questioning.

If it appears from an indicated response that a prospective juror should be questioned at side bar, counsel will make that request to the Court.

7. Peremptory Challenges

Peremptory challenges with respect to the prospective jurors qualified

for cause will be exercised at side bar as follows:

- (a) The government exercises its first challenge
- (b) Defendant exercises defendant's first and second challenges
- (c) The government exercises its second challenge
- (d) Defendant exercises defendant's third and fourth challenges
- (e) The government exercises its third challenge
- (f) Defendant exercises defendant's fifth and sixth challenges
- (g) The government exercises its fourth challenge
- (h) Defendant exercises defendant's seventh and eighth challenges
- (i) The government exercises its fifth challenge
- (j) Defendant exercises defendant's ninth challenge
- (k) The government exercises its sixth challenge
- (l) Defendant exercises defendant's tenth challenge

If either the government or defendant "passes," i.e., forgoes to exercise a challenge in the order prescribed, that party has thereby "used" the challenge. If both the government and defendant pass successively, the 12 persons then seated in the jury box constitute the jury in the case.

After the regular 12 jurors have been fully qualified and counsel state they are satisfied with the jury, the peremptory challenges as to the alternate juror(s) will then be exercised in the same manner.

8. Examination of Witnesses

Counsel will give the witness' name to the Deputy Marshal or Court Security Officer who will bring the witness to the courtroom deputy clerk for the oath.

Witnesses will be examined from the lectern as faced to the witness stand by the courtroom deputy clerk. Do not approach the witness without asking the permission of the Court. When permission is granted for the purpose of working with an exhibit, resume the

examination from the lectern when finished with the exhibit.

Counsel will indicate to the Court that counsel has completed the examination -- direct, cross, redirect, recross -- of a witness after which the Court will advise opposing counsel to proceed. During the examination of a witness counsel will first obtain permission of the Court if there is a desire to confer with co-counsel.

Witnesses shall be treated with fairness and consideration; they shall not be shouted at, ridiculed or otherwise abused.

The hostile witness can be examined firmly and extensively without abuse.

No person shall ever by facial expression or other conduct exhibit any opinion concerning any testimony which is being given by a witness. Counsel shall admonish their clients and witnesses to refrain from any such conduct.

9. Objections

Counsel will stand when making an objection, and will address the objection directly and only to the Court.

When objecting, state only that you are objecting and specify the ground or grounds of objection. Do not use objections for the purpose of making a speech, recapitulating testimony, or attempting to guide the witness.

10. Exhibits

It is expected that exhibits to be used by either or both parties will be submitted to the other side for examination before being used. Whenever practicable, exhibits should be shown to opposing counsel before Court convenes.

All exhibits are held in the custody of and are marked by the courtroom deputy clerk. Government exhibits will be marked "Gov't. Ex. - 1," etc. Defendant's exhibits will be marked "Def. Ex. - A." etc.

Each counsel shall keep a list of all exhibits.

In formulating any question to a witness dealing with an exhibit, specify the exhibit number or designation so that the record will be clear.

It is often helpful and will expedite the proceeding if copies of an exhibit are provided for the Court, opposing counsel and the witness.

Each counsel is responsible for any exhibits which counsel secures from the courtroom deputy clerk. At each noon-time or end-of-the-day adjournment, return all exhibits to the courtroom deputy clerk.

11. Doctors and Other Professional Witnesses - Out of Order

The Court attempts to cooperate with doctors and other professional witnesses and will, except in extraordinary circumstances, accommodate them by permitting them to be put on out of order. anticipate any such possibility and discuss it with opposing counsel. If there is objection, confer with the Court in advance.

12. Decorum

Colloquy or argument between attorneys shall not be permitted. Address all remarks to the Court.

Counsel shall maintain throughout the trial a quiet and dignified atmosphere in keeping with the highest traditions of judicial proceedings.

In a jury case, if there is an offer of stipulation, first confer with opposing counsel about it.

Do not ask the court reporter to mark testimony. All requests for rereading of questions or answers shall be addressed to the Court.

Counsel shall not exhibit familiarity with witnesses, jurors or opposing counsel during trial. The use of first names shall be avoided.

During the argument of opposing counsel, remain seated at the counsel table and be respectful. Never divert the attention of the Court or the jury.